In the High Court of Punjab and Haryana, at Chandigarh.

R.S.A. No. 3782 of 2007

Date of Decision: 4.12.2007

Balwan Singh and Others

…Appellants

Versus

Ramesh Kumar and others.

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Akshay Bhan, Advocate
for the appellants.

RAJESH BINDAL, J.

The defendants are in second appeal before this Court against the concurrent findings of fact recorded by both the Courts below, whereby the suit filed by the respondents/plaintiffs for declaration with joint possession as consequential relief, was decreed. The challenge was also to the alleged will executed by Santosh Devi in favour of the defendants/appellants on December 1, 2000.

It was alleged in the suit that deceased Santosh Devi daughter of Lajja Ram, was the owner in possession of the suit land as detailed in the plaint. The respondents/plaintiffs are her husband and children, respectively. The occasion to file the suit arose when after the death of Santosh Devi on January 10, 2001, the appellants/defendants on the basis of the alleged will dated December 1, 2000 got the mutation sanctioned in their favour on May 22, 2001. The suit was filed on July 28, 2001 claiming the will to be forged and fabricated document.

The suit was contested by the appellants by raising the plea that

the respondents/plaintiffs used to extort money from them and the present suit is also result of the same plan. It was further claimed that the suit land was belonging to the father of the appellants/defendants and the same was got mutated by Lajja Ram in her name only with an object to protect the same from being declared surplus, otherwise she had no right or title in the suit land. Regarding will, it was stated that as Santosh Devi used to remain sick, she executed a will in favour of the appellants on December 1, 2000 thereby bequeathing the property in dispute in their favour.

On appreciation of the evidence led by the parties, both the Courts below found that the respondents/plaintiffs were Class-I heirs of deceased Santosh Devi. The will in question was surrounded by various suspicious circumstances as the same was neither written by a regular scribe nor was a registered document. On consideration of the statement made by the scribe to the will, it was revealed in his cross-examination that the scribe Subhash Chand who had signed in English did not even know the term R.T.I. and L.T.I. as mentioned in the will. He stated that R.T.I. means witness, whereas L.T.I. means Lambardar whereas in the will the same was mentioned as the thumb impression of Santosh Devi and the witnesses, respectively. When the scribe did not even know the meaning of the terms used in the will scribed by him, a suspicion certainly arises especially when by way of the will, the Class-I legal heirs to the property are sought to be excluded.

Another contradiction, which is found in the pleadings of the appellants/defendants was that in the written statement, it was alleged that the land was transferred in the name of deceased Santosh Devi with a view to save the same from being declared surplus. However, in the evidence, it came to light that the property came to her in succession of her father and the will also recites in the same terms where it is mentioned that she did not want to inherit the property from her father. No reason has been given in the will to disinherit her husband and children. Though it is sought to be stated in the will that on her illness the amount was being spent by her brothers. However, no good reason is forthcoming there for when as per the recital in the will her husband's family owned substantial property and she was living with them. No place for scribing the will is mentioned. As stated in the will, deceased Santosh Devi was not keeping good health. As to whether the will was scribed in her village i.e. Amin, District Kurukshetra or village Pabnawa belonging to the appellants/defendants, is not evident from the will. There is nothing on the record to show as to whether even being critically ill she had

gone to her brothers' village to execute the will, otherwise there is no reason forthcoming as to how the scribe and the witnesses came in contact with deceased Santosh Devi.

The reason for execution of will at the age of 35 years and the death of the executant merely after one month of execution of will are other suspicious circumstances leading to the conclusion that the will projected by the appellants/defendants is a forged and fabricated document. Another contradiction which was noticed by the Courts below is that the executant of the will stated that she had enough property in her in-laws house, whereas the claim set up by the appellants/defendants was that the said land was given to Santosh Devi by her father because her husband used to remain ill and had no source of income. It is not disputed that at the time of death of Santosh Devi, she was having two minor children. It has further come on record that scribe of will Subhash Chand was none else than son of one of the beneficiaries Ram Sarup.

With these facts on record, it was concurrently found by both the Courts below that the will sought to be projected by the appellants/defendants was surrounded by various suspicious circumstances, which could not possibly be dispelled even before this Court. On preponderance of evidence, the Courts below have taken view in the matter, which cannot be held to be perverse under any circumstances.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

(Rajesh Bindal)
Judge

December 4, 2007
"DK"